

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-213402

DATE: March 29, 1984

MATTER OF: ITC-Distribution & Control Division

DIGEST:

1. Protest is denied even though the agency misfiled the protester's low bid and thus failed to present it for evaluation at bid opening. Since bid opening is public by statute, the protester was put on notice by bid opening that its bid had not been presented for evaluation and, accordingly, should have notified the agency prior to award rather than waiting 11 weeks about its bid, which would have enabled the agency to take corrective action.
2. Claim for bid preparation costs is denied where the agency only negligently, not arbitrarily or capriciously, misfiled a timely bid which was also the low, responsive bid and thus failed to consider the bid.
3. Claim for anticipated profits is denied since no legal basis exists which authorizes such a recovery.

ITC-Distribution & Control Division (ITC) protests the award of a contract to Pacs Inc. (Pacs), under invitation for bids (IFB) No. N00612-83-B-0119 issued by the Naval Supply Center (NSC), Charleston, South Carolina, for an electrical substation and a pole-mounted, three-phase enclosure. ITC contends that it timely submitted the low, responsive bid and that, therefore, it should have been awarded the contract. ITC also claims bid preparation costs of \$681 and anticipated profits in the amount of \$3,406.

We deny the protest and the claim.

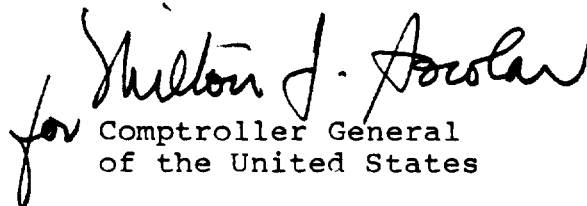
The bid opening date for the solicitation was July 13, 1983. ITC sent its bid by certified mail to NSC on June 23, 1983. NSC opened bids on July 13, and awarded the contract on August 25, 1983, to Pacs as the low, responsive bidder

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for \$34,542. ITC did not inquire as to the status of the solicitation until September 27, 1983, and was informed that award had been made to Pacs. ITC subsequently asked why award was made to Pacs, since its bid price of \$34,061 was lower than Pacs' bid. NSC conducted an investigation of ITC's bid and determined that ITC's bid had been received on June 27, 1983, but had been misfiled and, thus, not presented to the contract specialist for evaluation at bid opening.

While NSC misfiled ITC's timely, low bid and thus failed to present it to the contract specialist for evaluation at bid opening, ITC did not inquire as to the status of the solicitation until approximately 11 weeks after bid opening and 5 weeks after award. By statute, bids are to be opened publicly, 10 U.S.C. § 2305(c) (1976), and we accordingly find that ITC was put on notice by bid opening that its bid had not been presented for evaluation. Under the circumstances, ITC should have inquired prior to award as to the status of its bid. Such an inquiry prior to award would have enabled NSC to take corrective action. Therefore, we conclude that ITC's inaction prior to award after being put on notice by bid opening that its bid had not been presented for evaluation precluded NSC from being able to take corrective action.

We deny the protest and accordingly deny the claim.

for 
Comptroller General
of the United States